

Claimant alleges accidental injury on August 15, 1999, when she strained her right upper extremity while carrying a box. Respondent notes claimant originally described her injury on the E-1 Application for Hearing as occurring while running the cash register, which was one of claimant's regular duties. However, at the preliminary hearing, claimant testified that the initial injury occurred while carrying a box and she was then instructed by her supervisor to return to the cash register duties.

Respondent's representative Kim Groves, the manager of the store, was unable to recall whether she had had any conversations with claimant on the date of accident regarding claimant's upper extremity injuries. Both claimant and her mother testified regarding the occurrences surrounding the injury. Claimant testified to how the accident occurred, and her mother testified that claimant came home from work that night complaining of the problems from the injury. It was claimant's mother who suggested she go to Richard Egelhof, M.D., after respondent refused to provide medical care for claimant.

Respondent contends Dr. Egelhof originally described this as non-work-related. However, this information came in through the testimony of Ms. Groves. The medical documents attached to the preliminary hearing transcript either do not comment on causation or indicate that it is a "work comp injury."

In reviewing the medical evidence and the testimony of claimant, her mother and respondent's store manager, the Appeals Board finds that claimant has proven by a preponderance of the credible evidence that she suffered accidental injury arising out of and in the course of her employment with respondent on the date alleged.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge John D. Clark dated October 21, 1999, should be, and is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of December 1999.

BOARD MEMBER

c: Phillip B. Slape, Wichita, KS
Eric K. Kuhn, Wichita, KS
John D. Clark, Administrative Law Judge
Philip S. Harness, Director